IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT BENCH JAIPUR

O R D E R

Sube Singh Vs. The Union of India & Others

(SB Civil Writ Petition No. 5179/94)

Date of Order : 12th December, 2006

Hon'ble Mr. Justice KS Rathore

Mr. RS Bhadauria, for the petitioner.
Mr. Vinayak Joshi for
Mr. Bhanwar Bagri, for the respondents.

The petitioner was enrolled in the Army on 4.12.1975 and was compulsorily discharged with effect from 19.4.93 being placed in low medical category 'BEE' (Permanent) under Army Rule 13 (3) Item III (v) read with Army Rule 13 (2A) being sheltered appointment not available in low medical category. At that point of time the petitioner had rendered 17 and half years unblemished and satisfactory service as against 24 years service if his retirement is ordered in normal course. He maintained high profile throughout his service period and his service

record was impeccable and and exemplary.

During October, 1987, middle finger of right hand of the petitioner was swollen due to some infection. The petitioner therefore, reported to the Unit Medical Inspection Room for treatment. The duty medical officer Capt. I. Sinha inspected the finger and operated upon with the help of blade. As a result of operation there was instant reaction and whole of the right hand and palm got abnormally swollen. The medical officer realizing the gravity immediately referred the petitioner to military hospital, Jullundher. A second operation of the finger was conducted at once by the Military Hospital, Jullundher and the petitioner was placed in category 'CEE' (Temp) for three months.

A Review Medical Board was arranged during January, 1988 in Military Hospital, Jullundher and the petitioner was further placed in category 'CEE' (Temporary) for a further period of six months.

A second Review Medical Board was held during July, 1988 and the category of the petitioner was upgraded from 'CEE' (Temporary) to 'BEE' (Permanent) and was discharged from service.

The case of the petitioner is that the petitioner was entitled to get the 'sheltered appointment' under respondent no.4 as per the prevailing policy as per the Army Order 46/80. But, the request of the petitioner has been turned down vide Annexure-1 dated 20.4.93 mentioning in para 3 that under Army Rule 13(3) Item III (v) read in conjunction with Army Rule 13 (2A) being further appointment not available in LMC.

Vide Annexure-6 dated 30.11.92 which is a Certificate of Permanent Low Medical Category wherein in Part-I it was mentioned that Havaldar Sube Singh willing to continue in service being in medical category BEE (Permanent) and in Part II it was mentioned that Shelter Appointment is not available and

cannot be employed in low medical category BEE (P) in the interest of service.

Learned counsel for the petitioner placed reliance on the judgment rendered by this High Court in the case of “Union of India Vs. Ex L/Nk Kishan Singh” reported in 1997 Military Law Journal 44 wherein it was held as under:-

> “Respondent was discharged from the service on medical ground ignoring the recommendation of the medical authority that he was fit for alternative employment-Order of discharge quashed by High Court and respondent reinstated with 50% back wages.

Here, in the instant case, the case of the petitioner was recommended for sheltered appointment but by the telegram sheltered appointment which was recommended has been ordered to stop and pursuant to the telegram dated 20.11.92, vide letter dated 30.11.92 the sheltered appointment is refused as not available and the petitioner cannot be employed in low medical category BEE (P) in the interest of service.

As per the ratio decided by the Division Bench, the petitioner is entitled for shelter appointment and fit for sheltered appointment. Therefore, the orders dated 20.4.93 and 30.11.92 are hereby quashed and set aside and the respondents are directed to accommodate the petitioner on suitable employment as per Army rule, 1954 forthwith as the petitioner is fit to be appointed under the policy of sheltered appointment.

Accordingly, the writ petition stands allowed.

(KS RATHORE), J.